Petition

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81-1702

No _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1981

HERBERT W. VOORHIES, M.D.

Petitioner,

v.

UNITED STATES OF AMERICA

Petition For Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

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and the Law Offices of
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QUESTIONS PRESENTED

1. Before a valid search warrant can be issued pursuant to 21 U.S.C., Section 880(d)(1), must some "suspicious activity" be demonstrated sufficient to establish probable cause for the issuance?

2. In order to find a criminal violation of 21 U.S.C., Section 841(a), and 21 C.F.R., Section 1306.04(a), must the jury be instructed that it must find beyond a reasonable doubt that the defendant physician distributed, dispensed, or prescribed controlled substances: (1) not in good faith for a legitimate medical purpose and (2) not in the course of professional medical practice?

PARTIES INVOLVED BELOW

The parties to the Federal District Court trial and the parties to the appeal in the Sixth Circuit were: HERBERT W. VOORHIES, M.D., the Defendant and Appellant, and the UNITED STATES OF AMERICA the Plaintiff and Appellee.

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INTRODUCTION

The Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in the proceeding on November 2, 1981, and vacate said Court's affirmation of Petitioner's conviction.

OPINIONS BELOW

The opinion of the Sixth Circuit Court of Appeals below (Appendix A) is not reported. The opinion of the Federal District Court for the Middle District of Tennessee below (Appendix B) was not reported.

JURISDICTION

The judgment of the Sixth Circuit Court of Appeals below (Appendix A) was entered on November 2, 1981. A Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statute pursuant to which an administrative search warrant was issued to search and seize Petitioner's patient medication cards was 21 U.S.C. Section 880(d)(1) (1976):

> "Any judge of the United States or of a State court of record, or any United States magi-

strate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause. issue warrants for the purpose of conducting administrative inspections authorized by this sub-chapter or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term 'probable cause' means a valid public interest in the effective enforcement of this sub-chapter or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances speci-

fied in the application for the warrant."

The statute and federal regulation under which Petitioner was prosecuted and indicted was 21 U.S.C., Section 841(a) (1976) and 21 C.F.R. Section 1306.04 (1976):

21 U.S.C. Section 841(a).

> "(a) Except as authorized by this (title,) it shall be unlawful for any person knowingly or intentionally
> (1) to . . . distribute, or dispense . . . a controlled substance . . . "

21 C.F.R. Section 1306.04. Purpose of issue of prescription.

> "(a) A prescription for a controlled substance to be effective must be issued <u>for a legitimate medical purpose</u> by an individual practitioner acting <u>in the</u>

> usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner . . . " Emphasis added.)

STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised can be briefly stated:

On December 21, 1979, in a cause pending in the United States District Court for the Middle District of Tennessee, Nashville Division, entitled United States v. Herbert W. Voorhies, M.D., Criminal Number 78-30265, Petitioner was found guilty by a jury on an indictment of forty-nine counts charg ng violations of Title 21 United States Code, Section

841(a)(1). (Appendix B.) Basically, the indictment charged that Petitioner, a physician authorized to dispense controlled substances, while not acting in the usual course of his professional practice, unlawfully, knowingly, and intentionally did distribute controlled substances in violation of 21 U.S.C. Section 841(a) 1).

On January 7, 1980, Petitioner filed a Motion for a New Trial, which motion was denied by the court on January 9, 1980.

On February 4, 1980, the District Court entered judgment and Petitioner was sentenced to a term of six months "in a jail type institution" as a condition of a five year suspended sentence, and whereby Petitioner would spend the remainder of said term on probation. As a further condition of the suspended sentence, Petitioner was ordered to "give nine

hundred hours of public service under the direction of the probation office." (Appendix B.)

On November 2, 1981, this judgment and sentence was affirmed by the Court of Appeals for the Sixth Circuit, United States v. Herbert W. Voorhies, M.D., Number 80-5077. (Unreported.) No petition for rehearing has been filed.

A. Relevant facts concerning the questions presented in this Petition.

A compliance inspection of Petitioner's medical office was made from May 2, 1977 to May 11, 1977 by compliance investigators of the Drug Enforcement Administration, pursuant to a search warrant issued by a United States Magistrate. (Appendix C.) More than five hundred patient cards were seized (microfilmed) during the course of the search.

The application for the warrant was made by LARRY W. LOCKHART, Compliance Investigator for the Drug Enforcement Administration. In support of his application, Investigator LOCKHART stated:

> "The establishment has not been previously inspected pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970." (Appendix D.)

The warrant was issued pursuant to 21 U.S.C Section 880(d)(1)

Prior to trial. Petitioner moved to suppress all evidence and testimony derived from the search. The motion was renewed in a subsequent Motion for a New Trial. Petitioner's Motions to Suppress were denied.

Petitioner proffered Defendant's Requested Instruction Number 1 which was rejected by the trial court. (Appendix E.) Instead, in instructing the jury, the trial court below used the following in-

struction:

"The essential elements of the offense charged in Count One are as follows:

1. That the defendant possessed with intent to dispense, or dispensed the substance in question.

2. That the substance possessed or dispensed by the defendant was in fact a controlled substance as defined by the statute.

3. That the defendant knowingly and intentionally dispensed the controlled substance.

4. That the substances dispensed by the defendant were so dispensed for other than a

legitimate medical purpose in the usual course of professional practice.

As to each count you will determine whether each of the above elements has been proved beyond a reasonable doubt."

"Unless you find beyond a reasonable doubt that an act of dispensation charged in the indictment against a physician defendant was not done by the defendant physician in the usual course of his professional practice, then you should find him not guilty." (Emphasis added.)

REASONS FOR GRANTING THE WRIT

The QUESTIONS PRESENTED in this Petition raise substantial questions concerning the interpretation of federal statutes.

Firstly, the search warrant used to seize Petitioner's medical records was issued pursuant to 21 U.S.C. Section 880(d)(1), reproduced above. The sufficiency of the probable cause necessary for the issuance of a search warrant pursuant to this code section has been interpreted differently by various Circuit Courts of Appeals.

Both the Third Circuit Court of Appeals and the Ninth Circuit Court of Appeals have held that the passage of a substantial period of time since a previous compliance inspection, or where no inspection had ever been made, would be

sufficient to establish a valid public interest to support probable cause for the issuance of a warrant. See, United States v. Prendergast, 436 F. Supp. 931, 932 (W.D., Penn., 1977), aff'd, 585 F.2d 69 (3d Cir. 1968); United States v. Goldfine, 538 F.2d 815, 818-819 (9th Cir. 1976).

The Fifth Circuit Court of Appeals has held that the showing of suspicious activity would be sufficient to establish probable cause for the issuance of an administrative search warrant. United States v. Schiffman, 572 F.2d 1137, 1140 (5th Cir. 1978) (large purchases of controlled drugs by pharmacy); See, United States v. Greenberg, 334 F. Supp. 364, 367 (W.D. Pa. 1971) (purchases of extraordinary quantities of drugs); United States v. Montrom, 345 F. Supp. 1337, 1342 (E.D. Pa. 1972), aff'd without opinion, 480 F.2d 918, (3d Cir. 1973) (mammoth purchases by

registrant).

Before the Sixth Circuit Court of Appeals had rendered its ruling in the instant appellate case (Appendix A), the Sixth Circuit Court of Appeals had not ruled on the issue concerning the sufficiency of probable cause in the issuance of an administrative search warrant pursuant to 21 U.S.C. Section 880(d)(1). This Court should hold that the mere passage of time, without more, is insufficient to support a finding of probable cause. There is nothing set forth in the Application for Inspection (Appendix D), except a statement that Petitioner's business had not been inspected before and the government desired to do so. There is no indication that the drug laws were being broken, that there was probable cause to believe they were being broken, that the business was not being conducted

legally, or anything that would indicate the need for an inspection warrant.

It cannot be denied that there is a valid public interest in seeing that the drug laws are obeyed. Surely, however, the Fourth Amendment prohibits audits and inspections merely to see if the laws are being violated when the basis for the same is, apparently, general curiosity rather than some foundation or showing that establishes "probable cause."

Because of this conflict in the Circuit Courts' interpretation of the term "probable cause" in 21 U.S.C. Section 880(d)(1), this Court should establish a uniform standard against which the term "probable cause" can be measured.

Secondly, the jury charge in the instant case did not separately describe the two distinct elements necessary to find a conviction under 21 U.S.C. Section 841(a)

and 21 C.F.R. Section 1306.04(a).

The standards regarding the criminal culpability of registered physicians in dispensing controlled substances are complex and confusing. The standards are found in federal statutes, federal regulations, and federal case law. It is only from a proper and comprehensive reading of all three of these sources that the correct standards of criminal liability can be defined.

Because of this very complexity, it is necessary that the instructions given a jury in a case involving alleged improper distribution be clear and precise. The instruction given in this case did not accurately reflect the appropriate standards under which a confiction could be obtained.

Title II of the Comprehensive Drug Abuse Prevention and Controlled Sub-

stances Act of 1970 (hereinafter also referred to as the "Controlled Substances Act"), including 21 U.S.C. Section 801 et seq., along with 21 C.F.R. Section 1306.04(a) make it illegal for a physician to dispense certain controlled substances other than "in the course of his professional practice."

Title 21 U.S.C. Section 841, when coupled with 21 C.F.R. Section 1306.04 and the leading cases interpreting both the statute and the federal regulation define unlawful distribution and dispensing as conduct which is: (1) not in good faith for a legitimate medical purpose; and (2) not in the usual course of professional practice. Linder v. United States, 268 U.S. 5, 16, 17, 21 45 S.Ct. 446 (1925); Boyd v. United States, 271 U.S. 104, 106-107 (1926); United States v. Brandenburg, 155 F.2d 110, 113 (3d Cir. 1946); United

States v. Bartee, 479 F.2d 484, 488 (10th Cir. 1973); United States v. Larson, 507 F.2d 385, 386,387, 388, 389 (9th Cir. 1974); United States v. Moore, 423 U.S. 122, 138-139, 96 S.Ct. 335 (1975); United States v. Rosenberg, 515 F.2d 190, 197 (9th Cir.), cert denied, 423 U.S. 1031 (1975); United States v. Davis, 564 F.2d 840, 841, 845-846 (9th Cir. 1978); United States v. Rosen, 582 F.2d 1032, 1033 (5th Cir. 1978); United States v. Boettjer, 569 F.2d 1078, 1081, 1082 (9th Cir.), cert denied, 96 S.Ct. 1627 (1978); United States v, Kirk, 584 F.2d 773, 784 (6th Cir.) cert denied, 99 S.Ct. 726 (1978); United States v. Rogers, 609 F.2d 834, 838 (5th Cir. 1980).

Petitioner's proffered Request Jury Instruction (Appendix E) contained the proper standards of culpability pursuant to the Controlled Substances Act: that

the jury must find beyond a reasonable doubt that defendant dispensed a controlled substance other than in good faith for a legitimate medical purpose and other than in the usual course of his professional practice. See, e.g., United States v. Moore, 423 U.S. 122, 138-139, 96 S.Ct. 335 (1975); United States v. Rosenberg, 515 F.2d 190, 197 (9th Cir.), cert denied, 423 U.S. 1031 (1975); United States v. Carroll, 518 F.2d 187, 189, 190, 207 (6th Cir. 1975).

The trial court's jury instruction reduced what should be a two prong approach for establishing the standards of criminality to a one step procedure for conviction. With the instruction given by the trial court to the jury, the triers of fact could easily convict by finding either distribution of dispensing for other than a legitimate medical purpose or

distribution or dispensing which was not in the usual course of professional practice. The courts have held that this "either/or" standard of criminality is not the proper standard for conviction. United States v. Rosenberg, 515 F.2d 190, 197 (9th Cir.), cert denied, 423 U.S. 1031 (1975); United States v. Boettjer, 569 F.2d 1078, 1081, 1082 (9th Cir.), cert denied, 96 S.Ct. 1627 (1978); United States v. Kirk, 584 F.2d 773, 784 (6th Cir.) cert denied, 99 S.Ct. 726 (1978).

Because of the lower court's failure to clearly state each element which the government must prove, the jury was led to believe that the government was obligated to prove only one element beyond a reasonable doubt: that Petitioner did not act within the usual course of his professional practice.

The United States Supreme Court has

held, and it is a basic mandate in criminal law, "that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970).

Before the trier of fact may find an accused guilty of violating the Controlled Substances Act, the jury must determine beyond a reasonable doubt that the accused's conduct was not within the medical exception authorized by the statute, as that statute has been interpreted by the federal regulations and case law. See, United States v. Black, 512 F.2d 864, 881 (9th Cir. 1975). The courts have determined that the medical practitioner's exception to the Controlled Substances Act applies to one who is (1) a registered practitioner prescribing, dis-

pensing, or distributing in good faith for a legitimate medical purpose, and (2) in the usual course of his professional practice. The burden is on the government to prove beyond a reasonable doubt that the physician does not come within either category of the medical exception. United States v. Black, 512 F.2d 864, 867 (9th Cir. 1975); United States v. Green, 511 F.2d 1062, 1069, 1072 (7th Cir.), cert denied, 423 U.S. 1031, 96 S.Ct. 561 (1975); United States v. Carroll, 518 F.2d 187, 189, 207 (6th Cir. 1976); United States v. Rosenberg, 515 F.2d 190, 197 (9th Cir.), cert denied, 423 U.S. 1031 (1975).

Therefore, before a conviction will stand, the government must show beyond a reasonable doubt that the accused did not act in good faith for a legitimate medical purpose and was not acting in the course

of professional practice. Proof of only one element beyond a reasonable doubt is not sufficient

This Court has not definitively explained the elements necessary for a conviction under 21 U.S.C. Section 841(a) and 21 C.F.R. Section 1306.04(a). Until this Court ultimately defines the exact elements of criminal culpatility for a conviction under these sections, any jury instruction which incorrectly defines the elements of criminal action constitutes reversible error. It is of paramount importance that a trial court's jury instruction be clear, accurate, and complete particularity with respect to the essential elements of an alleged crime.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Certiorari should be granted and the judgment affirming conviction should be vacated.

Respectfully submitted,

Richardson Lynn, and
the Law Offices of
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Appendix

APPENDIX A

No. 80-5077

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

United States of America,
Plaintiff-Appellee,

v.

Herbert W. Voohries, M.D.
Defendant-Appellant.

APPEAL from the United States District Court for the Middle District of Tennessee.

Decided and Filed November 2, 1981.

Before: EDWARDS, Chief Judge, WEICK and MERRITT, Circuit Judges.

EDWARDS, Chief Judge. Defendant Voorhies, a doctor practicing in Nashville, Tennessee, appeals from a conviction after jury trial for unlawfully distributing controlled substances, in violation of 21 U.S.C. § 841 (a)(1) (1976). The jury found defendant guilty of 49 counts of illegal distribution of amphetamines, amphetamine-like drugs and various other controlled substances based on evidence which we find supports their verdict.

Appellant presents only two issues of arguable merit. He first contends that the search warrant under which hundreds of his patient medication cards were seized by microfilming was invalid because the application for the search warrant relied upon the following statement by a compliance investigator for the Drug Enforcement Administration: "The estab-

lishment has not been previously inspected pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970."

The applicable statutory provision authorizing the Attorney General to conduct administrative inspections under the Comprehensive Drug Abuse Prevention and Control Act is 21 U.S.C. § 880(b)(1) (1976), which provides as follows:

> For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this subchapter and otherwise facilitating the carrying out of his functions under this subchapter, the Attorney General is authorized, in accordance with this section to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions. 21 U.S.C. § 880(b)(1).

Probable cause for issuance of an administrative search warrant is defined in 21 U.S.C. § 880(d)(1) (1976) as follows:

> [T]he term "probable cause" means a valid public interest in the effective enforcement of this subchapter or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant. 21 U.S.C. § 880(d)(1).

The statutory scheme of which the above two paragraphs are a part contemplates careful regulation and control of potentially harmful drugs and 21 U.S.C. § 827 requires the keeping of records which must be made available for inspection. Careful inspection of the applicable statute shows clearly that the requirements of the statute were meant by Congress to apply to a medical "practitioner," (see 21 U.S.C. § 802(20)) who packs or holds controlled substances and dispenses them to ultimate users. (Sec. 21 U.S.C. § § 801a(10) and 822.) It therefore appears that the regulation of dispensation of narcotics by persons in medical practice[1] is a part of the comprehensive scheme set forth in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801*et seq.*

In the case at hand, the application for the administrative search warrant stated:

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1 This case does not involve forcible seizure of the patient records of a normal medical practice. At the time involved, Dr. Voorhies was practicing three weeks out of each month in California and one week in Nashville, Tennessee. The evidence in the case indicates thea 80% of his Nashville patients were "weight reduction" patients. The testimony at the trial provided evidence from which the jury could have concluded that he was much more specifically in the business of selling drugs than engaging in the profession of medicine. The patient records which were "seized" (microfilmed) were identified by the defendant as the only record he kept concerning dispensation as required by the terms of the Comprehensive Drug Abuse Prevention and Control Act of 1970. While the agent stated that he had a search warrant, the defendant did not refuse to allow microfilming. Thus, no decision was made concerning forcible seizure or alternatively another application for a regular search warrant based upon probable cause. *See Zap* v. *United States*, 328 U.S. 624 (1946).

Larry W. Lockhart, a duly authorized Compliance Investigator of the Drug Enforcement Administration, Department of Justice, Nashville, Tennesses, hereby applies for an inspection warrant, pursuant to Section 510 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), (Title 21, United States Code, Section 880), for the inspection of the Establishment as follows:

Herbert W. VOORHIES, M.D.
2412 12th Avenue South
Nashville, Tennessee 37204

1. Drugs or other substances included in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) (Title 21, United States Code, Section 811) are packed or held in this establishment.

2. The establishment has not been previously inspected pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970.

3. This is an inspection undertaken as a part of a statutorily authorized inspection program designed to assure compliance with the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513).

4. The inspection will be conducted within regular business hours. The compliance investigator's credentials will be presented to the registrant as prescribed in Section 510 of the Act. The inspection will

begin as soon as practicable after the issuance of this warrant and will be completed with reasonable promptness.

5. The inspection will extend to the establishment and all pertinent equipment, finished and unfinished materials, containers and labeling therein, and all books and records required to be maintained by law.

6. Samples and/or records will be seized when necessary to a reasonable inspection and receipt will be given therefor.

7. The compliance investigator named hereinbefor may be accompanied by one or more compliance investigators also duly authorized by the Drug Enforcement Administration, Department of Justice and/or investigators from the Tennessee Department of Public Health, Health Related Boards.

8. A return will be made to the Court at the completion of the inspection.

9. The authority for the issuance of the inspection warrant is Section 510 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), *Camara* v. *Municipal Court*, 387 U.S. 523 (1967), *See* v. *Seattle*, 387 U.S. 541 (1967) and *Colonnade Catering Corporation* v. *United States*, 397 U.S. 72 (1970).

Sworn to and subscribed by

s/ Larry W. Lockhart
LARRY W. LOCKHART
Drug Enforcement Administration

We believe the government's representation in the application for the warrant that the premises to be searched had never before been inspected constituted a "valid public interest" justifying issuance of an administrative search warrant, and, together with the statement of congressional findings and purposes in the act served to satisfy the requirements of the Fourth Amendment under the facts of this case. *United States* v. *Prendergast*, 585 F.2d 69 (3d Cir. 1978); *United States v. Goldfine*, 538 F.2d 815 (9th Cir. 1976). While we note appellant's argument that this court should reject *Prendergast* and *Goldfine* and adopt a rule requiring "a showing of suspicious activity" before the Magistrate who issued the administrative search warrant, we do not find such a requirement either in the legislative history, or in any of the Supreme Court cases arguably relevant here. *See Camara* v. *Municipal Court*, 387 U.S. 523 (1967), and*Colonnade Catering Corporation* v. *United States*, 397 U.S. 72 (1970), both of which upheld *warrantless* inspections authorized by comprehensive acts. See also *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1977) and *Donovan* v. *Dewey*, 49 U.S.L.W. 4748 (1981).

Appellant's second contention is that the District Judge's charge failed to separately describe two elements of the crime and failed to tell the jury that in the absence of proof of both, the defendant must be acquitted. As to the District Court's charge, we find no error requiring reversal of this case. The paragraphs objected to are as follows:

The essential elements of the offense charged in Count One are as follows . . .

4. That the substances dispensed by the defendant were so dispensed for other than a legitimate medical purpose in the usual course of professional practice.

. . .

Unless you find beyond a reasonable doubt that an act of dispensation charged in the indictment against a physician defendant was not done by the defendant physician in the usual course of his professional practice, then you should find him not guilty.

The language chosen in the first paragraph above by the District Judge is drawn directly from 21 C.F.R. § 1306.04(a) which says as follows:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. . .

The District Judge's charge, however, did not stop there. On the contrary, we believe that taken as a whole, it was calculated to protect any physician who made a good faith effort to comply with the law. For example, the District Judge specifically instructed the jury as follows:

> A controlled substance is dispensed by a physician in the usual course of his professional practice, and therefore lawfully, if the substance is dispensed by him in good faith in medically treating a patient.

> Good faith in this context means good intentions and honest exercise of best professional judgment as to a patient's medical needs. It connotes an observance of conduct in accordance with what the physician should reasonably believe to be proper medical practice.

This case was well prepared and well tried. We would find it hard to fault the jury for finding a defendant guilty who prescribed amphetamines for a patient who came in to ask for "black widows" in order to party with her friends.

The judgment of conviction is affirmed.

APPENDIX B

DEFENDANT HERBERT W. VOOORHIES,M.D.
Docket No. 78-30265

JUDGMENT AND PROBATION/ COMMITMENT ORDER

COUNSEL	WITH COUNSEL RICHARDSON LYNN (Name of Counsel)
PLEA	NOT GUILTY there is a factual basis for the plea, Counts 6,29,46 and 47 dismissed by the Court upon motion of the United States Attorney.
FINDING & JUDGMENT	Guilty as to counts 1,2,3,4,5,7,8,9,10,11 12,13,14,15,16,17,18,19,20,21,22,23,24,25 26,27,28,30,31,32,33,34,35,36,37,38,39,40 41,42,43,44,45,48,49,50,51,52 and 53. violating T. 21, U.S.C., § 841 (a)(1) RECEIVED FOR ENTRY 12:30 P.M. FEBRUARY 5,19--JULIA B. CROSS, CLERK
SENTENCE OR PROBATION ORDER	The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to

the co was shown, or appeared to the court, the order adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years as to Count 1; and on condition that the defendant be confined in a jail type institution for a period of six(6) months, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant placed on probation for such period upon the usual terms and conditions of probation.

Special condition being that during the remainder of that four and one-half(4½)year period of time that the Court suspended that the defendant will give at least four (4) hours a week, for fifty (50) weeks a year, out of each of the four(4) years and four(4) hours a week, for twenty-five (25) weeks, out of the one-half (½)year to some form of public service under the direction of the probation office.

SPECIAL CONDITIONS OF PROBATION

As to the remaining Counts of the Indictment, imposition of sentence suspended and the defendant placed on probation for a period of five (5) years to run concurrently with the sentence imposed in Count 1 of the Indictment.

A special parole term of three(3) years in addition to such term of imprisonment is hereby imposed pursuant to T.21.U.S.C. §841(1).(A)

ADDITIONAL CONDITIONS OF PROBATION

COMMITMENT RECOMMENDATIONS

The defendant is to remain on his present bond until he reports to the U.S. Marshal at Los Angeles, California, at 9:00 a.m. on Thursday, March 6, 1980

APPENDIX C

United States District Court
for the Middle District
of Tennessee
Nashville Division

IN THE MATTER OF

Administrative Inspection of
Herbert W. VOORHIES, M.D.
2412 12th Avenue South
Nashville, Tennessee 37202

WARRANT FOR IN-
SPECTION UNDER THE
FEDERAL COMPRE-
HENSIVE DRUG
ABUSE PREVENTION
AND CONTROL ACT OF
1970 (P.L. 91-513)(TITLE
21, U.S.C., SECTION 880)

To Larry W. Lockhart and any other authorized Compliance Investigator of the United States Drug Enforcement Administration and/or authorized investigators of the Tennessee Department of Public Health, Health-Related Boards:

Application having been made, and probable cause shown, by Larry W. Lockhart, United States Department of Justice, Drug Enforcement Administration for an inspection of the establishment described as:

Herbert W. VOORHIES, M.D.
2412 12th Avenue South
Nashville, Tennessee 37204

Based upon the following grounds:

1. This is an inspection of an establishment registered under Title II of this Act which has not been previously inspected.

2. Pursuant to Section 510 of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) and the decision of the Supreme Court in *Camara v. Municipal Court*, 387 U.S. 523 (1967), *See v. Seattle*, 387 U.S. 541 (1967), and *Colonnade Catering Corporation v. United States*, 397 U.S. 72 (1970), you are authorized to enter the above described premises at a reasonable time during ordinary business hours, and to inspect in a reasonable manner and to a reasonable extent, including the collection of samples if necessary, the establishment and all pertinent equipment, finished and unfinished materials, containers and labeling therein, and seizures of all books and records required to be maintained by law, if necessary.

A prompt return shall be made to this Court no later than ten (10) days from the date of issuance of this warrant.

UNITED STATES MAGISTRATE

Date: May 2, 1977

I received the attached inspection warrant on _____ _____ and have executed it as follows:

On _____ at _____ o'clock _____

I served the warrant on _____ at _____, _____. I left a copy of the warrant with _____ . During the period from _____ _____ to _____, I, or persons under my supervision, conducted an inspection of files, records and controlled substances at the premises shown abovd.

The following items were seized pursuant to the warrant:

_____

_____

_____

_____

_____

_____

Return made by _____ on _____ _____.

Subscribed and sworn

Subscribed and sworn to and returned before me this _____ day of _____, 19_____.

UNITED STATES
MAGISTRATE

APPENDIX D

United States District Court for the Middle District of Tennessee Nashville Division

IN THE MATTER OF

Administrative Inspection of

Herbert W. VOORHIES, M.D.
2412 12th Avenue South
Nashville, Tennessee 37204

APPLICATION FOR INSPECTION WARRANT UNDER THE FEDERAL COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970 (P.L. 91-513)(TITLE 21, U.S.C., SECTION 880)

To: United States Magistrate
United States District Court
Middle District of Tennessee
Nashville, Tennessee

Larry W. Lockhart, a duly authorized Compliance Investigator of the Drug Enforcement Administration, Department of Justice, Nashville, Tennessee, hereby applies for an inspection warrant, pursuant to Section 510 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), (Title 21, United States Code, Section 880), for the inspection of the establishment as follows:

Herbert W. VOORHIES, M.D.
2412 12th Avenue South
Nashville, Tennessee 37204

1. Drugs or other substances included in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) (Title 21, United States Code, Section 811) are packed or held in this establishment.

2. The establishment has not been previously inspected pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970.

3. This is an inspection undertaken as a part of a statutorily authorized inspection program designed to assure compliance with the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513).

4. The inspection will be conducted within regular business hours. The compliance investigator's credentials will be presented to the registrant as prescribed in Section 510 of the Act. The inspection will begin as soon as

Sworn to and subscribed by

LARRY W. LOCKHART
Drug Enforcement Administration

Sworn to before me on the 2nd day of May, 1977, at Nashville, Tennessee.

UNITED STATES MAGISTRATE

APPENDIX E

United States District Court
for the Middle District
of Tennessee
Nashville Division

UNITED STATES OF AMERICA,

v.

HERBERT W. VOORHIES, M.D.

No. 78-30265-NA-CR

DEFENSE REQUESTED INSTRUCTION NO.1

In order to find the Defendant guilty on any Count of this indictment, you must find beyond a reasonable doubt that the Defendant dispensed a controlled substance other than in good faith for a legitimate medical purpose and other than in the usual course of his professional practice. *United States v. Boettjer,* 569 F. Ed.2d, 1078, 1081 (9th Cir.), *cert denied,* 96 S.Ct. 1627 (1978).

Respectfully submitted

RITTER & ASSOCIATES

By _____

Jack Ritter

Attorney for Defendant

HOLLAND, LYNN & SMITH

By _____

Richardson R. Lynn

Attorney for Defendant

DECLARATION OF FILING AND SERVICE

I, R. J. RODRIGUEZ, hereby make this declaration pursuant to Supreme Court Rule 28.2

I declare that on March 12, 1982 copies of Petitioner's Petition for Writ of Certiorari have been deposited in the mail, postage prepaid,first class mail, filed and served on the following persons or entities:

United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543

United States District
Court, Middle District
Tennessee
United States Courthouse
Nashville, Tennessee 37203

United States Court of
Appeal for the 6th Circuit
United States Courthouse
Post Office Building, Room 502
Cincinnati, Ohio 45202

Margaret M. Huff
Office of U.S. Attorney
Middle District Tennessee
879 United States Courthouse
Nashville, Tennessee 37203

I declare that the foregoing is true and correct.

EXECUTED on March 12, 1982, at Los Angeles, California

_____

R. J. RODRIGUEZ